

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

April 3, 2017

To: Subcommittee on Environment Democratic Members and Staff
Fr: Committee on Energy and Commerce Democratic Staff
Re: Hearing entitled “Discussion Draft: Brownfields Reauthorization”

On **Tuesday, April 4, 2017, at 10:00 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Environment will hold a legislative hearing on draft legislation to reauthorize EPA’s Brownfields program. A section-by-section summary of the discussion draft is attached as an appendix to this memo.

I. BACKGROUND ON THE BROWNFIELDS PROGRAM

The Brownfields program was originally established by the Environmental Protection Agency (EPA) in conjunction with the agency’s work to implement the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), and was formally authorized in 2002.¹ EPA and Congress created the program to assist communities with the cleanup of brownfields sites, defined as “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”² The program primarily focuses on properties that are abandoned or underutilized and are not addressed under other federal remediation authorities.³

¹ The Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118 (2002).

² *Id.*

³ Congressional Research Service (CRS), *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act* (June 14, 2012) (R41039).

II. REVITALIZING BROWNSFIELDS PROMOTES ECONOMIC DEVELOPMENT

Cleanup of brownfields sites encourages economic redevelopment and reduces exposure to harmful contaminants. Cleanup of brownfields properties can also increase nearby property values (between \$500,000 and \$1.5 million for properties within one mile), increase efficiency, and decrease pollution. Every EPA brownfields dollar spent leverages \$16.11 on average. As of January 1, 2017, the program has leveraged over \$22.5 billion and over 117,000 jobs.⁴

At the time the Brownfields Act was adopted, there were an estimated 450,000 brownfields properties. According to EPA figures, more than 25,000 properties have been assessed and nearly 64,000 acres have been revitalized throughout the lifetime of the program.⁵

A. Brownfields Revitalization Funding

The Brownfields program provides both competitive and categorical grants to assist communities with assessment and remediation of contaminated properties. From fiscal years 2002 through 2006, the Brownfields Act authorized appropriations for competitive grants and grants to assist states and tribes at \$200 million and \$50 million annually, respectively.⁶ Since the authorization expired, appropriations for competitive grants have steadily declined, while state and tribal grants have remained relatively constant.

Eligible entities, including state and local governments, tribes, redevelopment agencies, and other “quasi-governmental” entities operating under the control of a local government, can apply for competitive grants for assessment and cleanup of individual properties. These grants make up the bulk of competitive grants under the Brownfields program. Potentially liable parties are not eligible for funds under this program.

Individual properties can receive funding for cleanups and assessments at a maximum of \$200,000 per site for remediation or assessment.⁷ Assessment grants can be used to inventory, assess, characterize, or conduct planning related to brownfields. An applicant may seek a waiver for the \$200,000 assessment grant limit and request up to \$350,000, based on the anticipated contamination level. EPA can award up to \$200,000 to assess sites contaminated by petroleum,

⁴ U.S. Environmental Protection Agency (EPA), *Brownfields Program Accomplishments and Benefits* (Mar. 30, 2017) (www.epa.gov/brownfields/brownfields-program-accomplishments-and-benefits).

⁵ *Id.*

⁶ The Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118 (2002).

⁷ EPA, *Brownfields and Land Revitalization Programs: Changing American Land and Lives* (Oct. 2009) (www.epa.gov/sites/production/files/2015-10/documents/09brochure.pdf).

which was not authorized under CERCLA previously. Grants typically require a 20 percent match.⁸

B. Liability Relief

The Brownfields statute includes a limited shield from CERCLA liability for “bona fide prospective purchasers.”⁹ This shield is intended to encourage potential redevelopers who had no role in contaminating the site. Liability under CERCLA includes response costs for remediation or cleanup, costs of federal public health studies, and the cost for damages to natural resources.

C. Federal Tax Incentives

Congress established federal tax incentives to provide additional assistance in brownfields cleanups. Through 2011, taxpayers could deduct the cost of a site remediation in the year costs were incurred.¹⁰ In 2006, Congress extended this incentive to petroleum cleanups. Another tax incentive, which was authorized in the American Jobs Creation Act of 2004 and expired at the end of 2009, allowed nonprofit organizations to treat gains from investments in qualified sites as tax exempt.¹¹ Federal, state, and local tax incentives and credits give redevelopers extra cash flow, which can appeal to lenders and allow a redeveloper to use resources usually spent on taxes for other purposes. These incentives have not been reauthorized.

III. ISSUES FOR FURTHER CONSIDERATION

Stakeholders have suggested changes to the Brownfields program to increase eligibility, increase flexibility in the use of funds, and build capacity to implement the program in disadvantaged communities. Concerns over the availability of funding for the Brownfields program were accentuated by the budget proposal put forth by President Trump, which includes a cut of more than 30 percent from the EPA’s operating budget in FY18.¹² Although details on

⁸ EPA, *Summary of the Small Business Liability Relief and Brownfields Revitalization Act* (Sept. 30, 2015) (www.epa.gov/brownfields/summary-small-business-liability-relief-and-brownfields-revitalization-act).

⁹ To qualify, an entity must have: (i) purchased the property after January 11, 2002; (ii) not be responsible for the site’s contamination; (iii) inquire about the site’s past uses and owners; and (iv) comply with response actions and land use restrictions.

¹⁰ EPA, *Brownfields Tax Incentive*, (Sept. 30, 2015) (www.epa.gov/brownfields/brownfields-tax-incentive).

¹¹ CRS, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act* (June 14, 2012) (R41039).

¹² Office of Management and Budget, *America First: A Budget Blueprint to Make America Great Again* (Mar. 13, 2017).

cuts to specific programs remain limited, there are reports that brownfields redevelopment grants across several agencies will be cut by 40 percent, from \$25.6 million under current levels to \$14.7 million in FY18.¹³ Earlier reports on the President's budget listed brownfields projects among more than two dozen EPA programs for which funding would be completely eliminated in FY18.¹⁴

IV. WITNESSES

The following witnesses have been invited to testify:

Meade Anderson

Brownfields Program Manager

Virginia Department of Environmental Quality

On behalf of the Association of State and Territorial Solid Waste Management Officials

J. Christian Bollwage

Mayor

City of Elizabeth, New Jersey

On behalf of the U.S. Conference of Mayors

The Honorable Parris N. Glendening

President

Smart Growth America's Leadership Institute

Robert J. Martineau, Jr.

Commissioner

Tennessee Department of Environment and Conservation

On behalf of the Environmental Council of States

The Honorable Salvatore J. Panto, Jr.

Mayor

City of Easton, Pennsylvania

On behalf of the National League of Cities

¹³ *Proponents push to boost Brownfields, Superfund in rebuke to Trump's cuts*, InsideEPA.com (Mar. 24, 2017).

¹⁴ *EPA budget said to "zero out" scores of programs; cut grants, staff*, InsideEPA.com (Mar. 1, 2017).